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14 CV 7054

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE KOEHL

-----X
MJX ASSET MANAGEMENT, LLC,

Plaintiff,

-against-

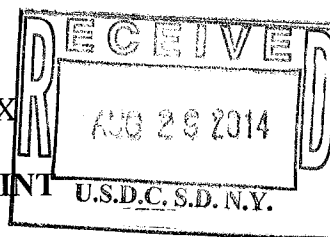
MJX Ventures, Inc. and
MJX Ventures, LLC,

Defendants.
-----X

Civil Action No.

JURY TRIAL REQUESTED

COMPLAINT



INTRODUCTION

1. By and through its attorneys, MJX ASSET MANAGEMENT, LLC ("MJX" or "Plaintiff") alleges claims against MJX Ventures, Inc. and MJX Ventures, LLC ("MJX Ventures" or "Defendants") as follows:

2. This is an action under federal and state law for trademark infringement and false designation of origin, trademark dilution and unfair competition pursuant to Section 43(a) of the United States Trademark law, common law of the State of New York and N.Y. Gen. Bus. Law §360-1. MJX seeks injunctive relief, damages, statutory damages, costs, an accounting of profits

and attorneys' fees based on Defendant's intentional infringement and dilution and related misconduct.

PARTIES

3. Plaintiff, MJX Asset Management LLC is a Delaware limited liability company and a specialized asset management company, with its principal place of business at 12 East 49th Street, 29th floor, New York, New York.

4. Upon information and belief, Defendant MJX Ventures, Inc. ("MJX Ventures") is a California corporation with a place of business at 26475 Rancho Parkway, South Lake Forest, California.

5. Upon information and belief, Defendant MJX Ventures LLC is a Nevada limited liability company with a place of business at 300 Carlsbad Village Drive, Suite 108QA/385, Carlsbad, California.

6. Upon information and belief, MJX Ventures LLC manages and directs the activities of MJX Ventures, Inc.

JURISDICTION AND VENUE

7. This Court has original jurisdiction over this action pursuant to 15 U.S.C. §1121 and subject matter jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1338. This Court has supplemental jurisdiction over the claims arising under the statutory and common law of the State of New York pursuant to 28 U.S.C. §1367.

8. This Court has personal jurisdiction over Defendants, pursuant to CPLR 302(a)(1) and (3) because, upon information and belief, it transacts business within the State and contracts to supply services in the State, including but not limited to, maintaining employees, officers and/or operations in the State, that are related to the violations of the United States Trademark

law and other unlawful conduct at issue in this Complaint and because the harm suffered by Plaintiffs within this forum flows directly from such business conducted by Defendants. In the alternative, Plaintiff requests a reasonable opportunity to conduct limited jurisdictional discovery to demonstrate that Defendants are transacting business or regularly soliciting business or engaging in a persistent course of conduct in the forum.

9. Venue is appropriate pursuant to 28 U.S.C. § 1391(b)(1) and (2) because all Defendants are deemed to reside in this District under 28 U.S.C. §1391(c)(2) and a substantial part of the events giving rise to the claims occurred in this District.

FACTS COMMON TO ALL COUNTS

Plaintiff's Marks

10. MJX is an asset-management company that acts as portfolio manager for collective investment funds marketed under names that begin with “Venture”—for example, “Venture VI CDO, Limited.” The “Venture” funds invest primarily in non-investment grade and leveraged finance assets. Since 2003, MJX has managed eighteen (18) funds with aggregate capitalization of almost \$10 billion under the “Venture” banner.

11. MJX provides investment advisory services to its funds under the marks MJX ASSET MANAGEMENT and MJX (the “Legitimate MJX Marks”). Investors in MJX’s Venture funds include foreign and domestic banks, insurance companies, hedge funds and other large institutional investors, along with high net worth individuals whose decisions to invest in the funds are based in large part on MJX’s proven expertise and sterling reputation in the financial market place. Investors of this type are extremely selective about the advisors to whom they entrust money for investment, and they are extremely sensitive to any information that may

reflect negatively on an advisor. Any negative information about a company in this space can destroy the opportunity to compete for business with this sensitive audience.

12. MJX was co-founded in 2003 by Hans Christensen, whose presence and efforts helped to establish the Legitimate MJX Marks as designating high-quality services in the financial markets.

13. MJX is not an English word and does not have an established non-trademark meaning.

14. The Legitimate MJX Marks are inherently distinctive as applied to MJX's services.

15. MJX currently has about 35 employees, along with \$7.8 billion under management.

16. MJX has been registered as an investment adviser under the Investment Advisers Act of 1940 since November 2010.

17. MJX's use of the Legitimate MJX Marks predates MJX Ventures' first use of its corporate name and infringing and dilutive marks MJX, MJX (stylized), MJX MARIJUANA INDEX, and MJX1 by at least ten years.

18. MJX has an outstanding reputation in the financial markets as a source of high-quality management of structured investment funds investing primarily in leveraged finance assets, and as a source of high-quality advice and information in the field of leveraged finance assets.

19. Investors in both the U.S. and international financial markets understand the Legitimate MJX Marks to identify MJX as the source, origin, or sponsor of the services rendered by MJX. MJX has the exclusive right to use the Legitimate MJX Marks, both MJX and MJX ASSET MANAGEMENT, for these services, and for financial services generally.

Defendants' Unauthorized Use of the Marks

20. MJX has received communications indicating actual confusion among persons in the financial services industry about whether MJX is the source, origin, or sponsor of the services offered by MJX Ventures under the marks MJX, MJX (stylized), MJX MARIJUANA INDEX, and MJX1.

21. MJX Ventures, without authorization and without any connection to MJX , offers to sell and sells financial services and financial information under the infringing and dilutive marks MJX, MJX (stylized), MJX MARIJUANA INDEX, and MJX1.

22. MJX Ventures has alleged before the United States Patent and Trademark Office, in application serial no. 86323172, that it offers the following services under the infringing and dilutive mark MJX: “Providing financial indices based on selected groups of securities; Providing financial indices of select securities to enable consumers to evaluate investments and market trends in the securities market.”

23. MJX Ventures has alleged before the United States Patent and Trademark Office, in application serial no. 86323172, that it offers the following services under the infringing and dilutive mark MJX: “Financial investment analysis and stock research; Financial investment in the field of investing in companies that provide legal, regulatory, and business compliance assistance to the legal cannabis industry; Monitoring financial markets for investment purposes.” On information and belief, MJX Ventures provides such services under the infringing and dilutive mark MJX.

24. MJX Ventures’ use of the infringing and dilutive mark MJX for the services described in application serial no. 86323172 is likely to cause confusion as to the source, origin, or sponsorship of MJX’s and/or MJX Ventures’ services.

25. MJX Ventures has alleged before the United States Patent and Trademark Office, in application serial no. 86323223, that it offers the following services under the infringing and dilutive mark MJX (stylized): “Financial investment in the field of investing in companies that provide legal, regulatory, and business compliance assistance to the legal cannabis industry.” On information and belief, MJX Ventures provides such services under the infringing and dilutive mark MJX (stylized).

26. MJX Ventures has alleged before the United States Patent and Trademark Office, in application serial no. 86323223, that it offers the following services under the infringing and dilutive mark MJX (stylized): “Creating an on-line community for the legal cannabis industry for the purpose of creating an online market place for retailers, vendors, and consumers.” On information and belief, MJX Ventures provides such services under the infringing and dilutive mark MJX (stylized).

27. MJX Ventures' use of the infringing and dilutive mark MJX (stylized) for the services described in application serial no. 86323223 is likely to cause confusion as to the source, origin, or sponsorship of MJX's and/or MJX Ventures' services.

28. MJX Ventures has alleged before the United States Patent and Trademark Office, in application serial no. 86266300, that it offers the following services under the infringing and dilutive mark MJX MARIJUANA INDEX: "Providing financial indices based on selected groups of securities; Providing financial indices of select securities to enable consumers to evaluate investments and market trends in the securities market." On information and belief, MJX Ventures provides such services under the infringing and dilutive mark MJX MARIJUANA INDEX.

29. MJX Ventures has alleged before the United States Patent and Trademark Office, in application serial no. 86266300, that it offers the following services under the infringing and dilutive mark MJX MARIJUANA INDEX: "Financial investment analysis and stock research; Financial investment in the field of index funds and exchange traded funds relating to the marijuana, hemp and cannabis industries; Monitoring financial markets for investment purposes; Providing an on-line searchable database featuring financial information about index funds and exchange traded funds relating to the marijuana, hemp and cannabis industries." On information and belief, MJX Ventures provides such services under the infringing and dilutive mark MJX MARIJUANA INDEX.

30. MJX Ventures has alleged before the United States Patent and Trademark Office, in application serial no. 86266300, that it offers the following services under the infringing and dilutive mark MJX MARIJUANA INDEX: “Providing an online non-downloadable Internet-based system application featuring technology enabling users to manage, discuss, report, share and research marijuana, hemp and cannabis industry stocks.” On information and belief, MJX Ventures provides such services under the infringing and dilutive mark MJX MARIJUANA INDEX.

31. MJX Ventures’ use of the infringing and dilutive mark MJX MARIJUANA INDEX for the services described in application serial no. 86266300 is likely to cause confusion as to the source, origin, or sponsorship of MJX’s and/or MJX Ventures’ services.

32. Notwithstanding some local decriminalization of marijuana, its remains illegal under United States law as well as under the laws of the State of New York and most states of the United States.

33. MJX Ventures is operated in part by Lawrence Horwitz, Chairman of the Board and General Counsel, who is an attorney, and is represented by outside counsel in its trademark applications before the United States Patent and Trademark Office. As a result, a reasonable opportunity for discovery is likely to uncover evidence showing that MJX Ventures performed an internet or trademark search for “MJX” and/or that MJX Ventures adopted its “MJX Ventures” corporate names with knowledge of MJX’s prior use of the mark MJX.

34. MJX Ventures is operated in part by Lawrence Horwitz, Chairman of the Board and General Counsel, who is an attorney, and is represented by outside counsel in its trademark applications before the United States Patent and Trademark Office. As a result, a reasonable opportunity for discovery is likely to uncover evidence showing that MJX Ventures performed an internet or trademark search for “MJX” and/or that MJX Ventures began using the mark MJX with knowledge of MJX’s prior use of the mark MJX.

35. According to MJX Ventures’ website www.mjxfund.com, Frank Marino, the President and CEO of MJX Ventures, “has extensive experience in sourcing capital for both private and public companies, with a focus on European institutional investors investing in U.S. companies” and “heads the investment banking division of Marv Capital, Inc., a New York Based investment bank focused on facilitating corporate debt trading in the secondary market.” MJX’s reputation and activities are such that a person with Mr. Marino’s claimed experience would be highly likely to have knowledge of MJX and the Legitimate MJX Marks. As a result of these activities, a reasonable opportunity for discovery is likely to uncover evidence showing that MJX Ventures began using the mark MJX with knowledge of MJX’s prior use of the Legitimate MJX Marks, as well as evidence that MJX Ventures’ business operations are conducted and directed to a substantial degree from this state and district.

36. MJX Ventures uses the infringing and dilutive marks MJX, MJX (stylized), MJX MARIJUANA INDEX, and MJX1 in promoting services and providing information through two websites, www.marijuanaindex.org and www.mjx1.net.

37. Through its website www.marijuanaindex.org, MJX Ventures promotes an index focused on the marijuana industry under the infringing and dilutive marks MJX and MJX MARIJUANA INDEX.

38. According to MJX Ventures' website www.marijuanaindex.org, "MJX Marijuana Index will now feature three unique NYSE tickers with distribution on NYSE's index system." In connection with the planned distribution of this index to the New York Stock Exchange in this state and district, the index being branded with the infringing and dilutive marks MJX and MJX MARIJUANA INDEX, MJX Ventures has entered a "partnership" under which it will be assisted in this distribution by Interactive Data Corporation, which according to its website <http://www.interactivedata.com> has offices in this state and district.

39. MJX Ventures is conducting business in this state and district, and is using its infringing and dilutive marks MJX, MJX (stylized), and MJX MARIJUANA INDEX in commerce in this state and district.

40. On its website mjxfund.com, MJX Ventures asserts that it provides support for the "MJX Brand" via the website www.marijuanaindex.com [sic, www.marijuanaindex.org], which it claims has "over 8,000 subscribers" and "approximately 300,000 unique visitors each month." Persons who visit MJX Ventures' website. www.marijuanaindex.org, view and are likely to be confused by MJX Ventures' use of the infringing and dilutive marks MJX and MJX MARIJUANA INDEX.

41. MJX Ventures' website www.marijuanaindex.com is interactive in that it invites visitors to subscribe by providing their e-mail addresses. MJX Ventures then transmits, to its subscribers, newsletters and/or electronic mail messages promoting MJX Ventures' financial and information services. Those newsletters and electronic mail messages, one of which appears to be posted on the website as an article, use the infringing and dilutive MJX and MJX MARIJUANA INDEX marks in promoting MJX VENTURES' services to the 8,000 subscribers. It is likely that the 8,000 subscribers include persons residing or employed within this state and district. Further, a reasonable opportunity for discovery is likely to uncover evidence showing that MJX Ventures is infringing and/or diluting the MJX mark by using the infringing and dilutive marks MJX, MJX (stylized), and MJX MARIJUANA INDEX to promote MJX Ventures' services to subscribers and/or index members residing or doing business in this state and district.

42. MJX Ventures' website www.marijuanaindex.com also invites visitors to apply to have their companies in the marijuana business become part of an index made up of stocks of companies in the marijuana industry. Upon information and belief, MJX Ventures has thus formed business relationships with businesses in the marijuana industry by which those businesses become listed and/or become included in the index. The index is promoted under the infringing and dilutive marks MJX and MJX MARIJUANA INDEX.

43. MJX Ventures uses www.mjxfund.com to communicate with investors in an interactive fashion. The site invites investors to contact MJX Ventures by telephone. In addition, portions of the website require an investor submit a name and e-mail address in order to receive a password enabling the investor to log in and receive information that, upon information and belief, is not available elsewhere on the website. Further, upon information and belief, MJX Ventures has formed interactive relationships with investors in this fashion. MJX Ventures' website www.mjxfund.com uses the infringing and dilutive marks MJX, MJX(stylized), and MJX MARIJUANA INDEX in promoting MJX Ventures' services.

44. MJX Ventures also operates the website www.mjx1.net, which prominently displays the infringing and dilutive mark MJX1. The website's landing page has the caption "One Cannabis. [T]he first network built for you[.]" The site also describes MJX1 as "an MJX Company," which is likely to cause confusion as to the source, origin, or sponsorship of MJX's and/or MJX Ventures' services.

45. MJX Ventures' infringing and dilutive mark MJX is identical to the legitimate mark MJX.

46. MJX Ventures' marks MJX (stylized), MJX MARIJUANA INDEX, and MJX1 incorporate the legitimate MJX mark in its entirety and are substantially similar to the Legitimate MJX Marks.

47. As alleged above, a reasonable opportunity for discovery is likely to uncover evidence showing that MJX Ventures adopted its "MJX Ventures" corporate names and MJX mark with knowledge of MJX's prior use of the Legitimate MJX Marks. These tortious acts were purposefully directed at MJX in this state and district, have harmed MJX in this state and district, and form the basis of this action.

48. As alleged above, a reasonable opportunity for discovery is likely to uncover evidence showing that MJX Ventures is doing business in this state and district, and that MJX Ventures is using the infringing and dilutive marks MJX (stylized), MJX MARIJUANA INDEX, and MJX1 in doing that business.

COUNT I: False Designation of Origin (§ 43(a) of the Lanham Act)

49. Plaintiff incorporates by reference the allegations of all preceding paragraphs of this complaint.

50. MJX Ventures' use of MJX, MJX (stylized), MJX MARIJUANA INDEX, and MJX1 creates a likelihood of confusion in the marketplace as to the origin of MJX's and MJX Ventures' respective services.

51. MJX Ventures' use of MJX, MJX (stylized), MJX MARIJUANA INDEX, and MJX1 in connection with MJX Ventures' services is likely to cause confusion or mistake, or to deceive, as to the origin, sponsorship, or approval of the parties' respective services.

COUNT II: Unfair Competition (§ 43(a) of the Lanham Act)

52. Plaintiff incorporates by reference the allegations of all preceding paragraphs of this complaint.

53. MJX Ventures' use of MJX, MJX (stylized), MJX MARIJUANA INDEX, and MJX1 in connection with financial services is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of the goods and services of MJX Ventures with MJX, or as to the origin, sponsorship, or approval of MJX Ventures' services by MJX.

54. MJX Ventures' use of MJX, MJX (stylized), MJX MARIJUANA INDEX, and MJX1 in connection with financial services is likely to create a false impression in the minds of consumers (including both retail and institutional investors) that MJX Ventures is affiliated with, endorsed by, or sponsored by MJX.

55. MJX Ventures' use of MJX, MJX (stylized), MJX MARIJUANA INDEX, and MJX1 constitutes unfair competition in violation of 15 U.S.C. § 1125(a).

56. MJX has been and likely will continue to be damaged by these acts of unfair competition by MJX Ventures.

57. As a result of MJX Ventures' acts of unfair competition alleged herein, MJX has suffered and will continue to suffer irreparable harm.

58. MJX Ventures' acts alleged herein have been knowing, intentional, and in bad faith.

COUNT III: Dilution ((N.Y. Gen. Bus. Law §360-I))

59. Plaintiff incorporates by reference the allegations of all preceding paragraphs of this complaint.

60. MJX offers services directed to leveraged finance assets.

61. MJX does not offer services directed to the marijuana industry.

62. MJX Ventures offers services related to investing in the marijuana industry.

63. MJX Ventures' use of MJX, MJX (stylized), MJX MARIJUANA INDEX, and MJX1 tends to cause investors, potential investors, the finance industry, and the public in general to believe mistakenly that MJX is the source of, or sponsors or approves, MJX Ventures' services.

64. As a result of the mistaken belief that MJX is the source of, or sponsors or approves, MJX Ventures' services, the distinctive quality of the Legitimate MJX Marks is reduced.

65. As a result of the mistaken belief that MJX is the source of, or sponsors or approves, MJX Ventures' services, the Legitimate MJX Marks may become linked, in the minds of consumers (including both retail and institutional investors), to services of lesser quality than the services of MJX that are customarily sold under the Legitimate MJX Marks.

66. MJX Ventures' use of the Legitimate MJX Marks tends to cause consumers (including both retail and institutional investors) to believe mistakenly that MJX, as the owner of the Legitimate MJX Marks, is the source of, or sponsors or approves, services related to the marijuana industry.

67. Because marijuana is and has been illegal throughout most of the United States and in many foreign countries, an association with the marijuana industry portrays the Legitimate MJX Marks in an unwholesome and unsavory light.

68. Because marijuana is and has been illegal throughout most of the United States and in many foreign countries, an association with the marijuana industry is likely to cause negative associations with the Legitimate MJX Marks.

COUNT IV: Unfair Competition Under New York Common Law

69. Plaintiff incorporates by reference the allegations of all preceding paragraphs of this complaint.

70. By the acts and activities complained of herein, defendant MJX Ventures has passed off its services, and continues to pass off its goods and services as being produced by, under license from, or with the approval of the plaintiff, MJX.

71. MJX has no control over the infringing services sold or offered for sale by MJX Ventures.

72. MJX's good will and reputation are likely to be irreparably harmed by MJX Ventures' deceptive and unauthorized use of the Legitimate MJX Marks.

73. MJX Ventures' actions alleged herein were performed in bad faith.

WHEREFORE, plaintiff prays that this Court enter judgment against both defendants as follows:

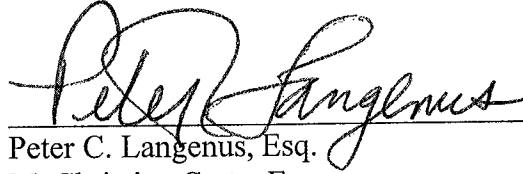
- A. a permanent injunction enjoining and restraining each defendant and its agents, servants, employees, affiliates, divisions, and subsidiaries, and those in association with them, from using the MJX, MJX (stylized), MJX MARIJUANA INDEX, or MJX1 marks, or any other name, mark, or design confusingly similar thereto or dilutive thereof;
- B. an order requiring all products, labels, brochures, signs, advertisements, web pages, or other materials in any defendant's possession or control bearing the MJX, MJX (stylized), MJX MARIJUANA INDEX, MJX1 marks, or any other name, mark, or design confusingly similar thereto or dilutive thereof to be delivered up and destroyed;
- C. an award of all damages and other monetary relief pursuant to 15 U.S.C. § 1117;
- D. an award of all damages and other monetary relief for trademark dilution pursuant to 15 U.S.C. §§ 1117 and 1118;
- E. an award of plaintiff's attorneys' fees, if warranted, due to the exceptional nature of MJX Ventures' conduct pursuant to 15 U.S.C. § 1117 and applicable state law;

- F. a declaration that MJX Ventures' copying, adoption, and use of the MJX, MJX (stylized), MJX MARIJUANA INDEX, and MJX1 marks constitutes one or more of the following: false designation of origin and unfair competition under both federal and state law, and trademark dilution under state law;
- G. an order that MJX Ventures terminate immediately any contracts or agreements related to distribution of services branded with the MJX, MJX (stylized), MJX MARIJUANA INDEX, or MJX1 marks;
- H. an award of compensatory and punitive damages, including disgorgement of defendant's profits related to sale of unauthorized goods and services under the MJX, MJX (stylized), MJX MARIJUANA INDEX, or MJX1 marks;
- I. an award of profits generated by unauthorized sale of products branded with the MJX, MJX (stylized), MJX MARIJUANA INDEX, or MJX1 marks;
- J. an order for an accounting of all sums received by MJX Ventures and related to the unauthorized sale of products and services branded with the MJX, MJX (stylized), MJX MARIJUANA INDEX, or MJX1 marks;
- K. an award of pre-judgment and post-judgment interest on the damages caused to plaintiff by reason of MJX Ventures' acts complained of herein;
- L. an award of all costs of this suit; and
- M. An award of further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: August 29, 2014

A handwritten signature in black ink, reading "Peter C. Langenus", written over a horizontal line.

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